



UNITED STATES DEPARTMENT OF COMMERCE
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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/028,677 03/09/93 ARGENTA

33M1/0112
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L.
LACYK, J. EXAMINER

ART UNIT PAPER NUMBER

3305

7

DATE MAILED: 01/12/94

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input checked="" type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input checked="" type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-49 _____ are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 1-49 _____ are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other _____

Claims 1-2, 5, 7-11, 19, 24, 26, 28-34, 38-39, 42-43 and 45 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 1, 7, 8, 28, 42 the use of "adapted to" language should be used to avoid inadvertently claiming part of the body i.e. the tissue. Also in claim 1 the reduced pressure supply means is connected to a source of suction but is not positively connected to the rest of the device. In claims 2, 26, 43, 45 the use of "locatable" and "securable" is indefinite in that it is unclear whether the elements are located or secured or not. In claim 5 it is unclear what the cover is protecting the wound from impact of, i.e. what is impacting, claims 1, 7-11, 19 24 and 29-34 are incomplete since the claims fail to define anything such as a screen or foam from keeping the cover from contacting the wound. The specification only teaches using a rigid cover or a support means, or using a screen or foam between the wound and cover. Claim 38 is indefinite in that it is unclear what the limitation of "a reduction" are, how much of a reduction. Claim 39 appears to be incomplete in that all that is claimed is the foam and tube, it appears that the cover need to be positively claimed within the body of the claim to be a complete device for applying a reduced pressure to the wound.

*Spd
1/10/84*

Claims 1-4 and 7 are provisionally rejected under the

judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 37-39, 42, 51 and 53 of copending application Serial No. 792,001. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are a mere rearranging in the scope of the claim.

This is a *provisional* obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 12-13 and 35-38 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4, 9, 13, 14 and 24 of copending application Serial No. 792,001. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are a mere rearranging in the scope of the claims.

This is a *provisional* obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 39-40 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 51 of copending application Serial No. 792,001. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are a

mere rearranging in the scope of the claims.

This is a *provisional* obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim 47 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 31-33 of copending application Serial No. 792,001. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are a mere rearranging in the scope of the claims.

This is a *provisional* obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5, 8-9, 12, 14 are rejected under 35 U.S.C. § 102(b) as being anticipated by Barbieri.

Barbieri discloses a wound dressing that has a vacuum means to apply a suction or negative pressure to the wound and a sealing means to attach the device and to isolate the wound from the surrounding environment which maintains a negative pressure.

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The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 6-7, 11, 13 are rejected under 35 U.S.C. § 103 as being unpatentable over Barbieri in view of Richard.

Although Barbieri, discusses above, teaches using an adhesive to secure or seal the cover and does not disclose using a cuff around the periphery. Richard discloses a similar device a shows that it is well known to use a cuff or rim (24) to seal the cover. Therefore a modification of Barbieri such that a cuff, as taught by Richard, is used would have been obvious to one skilled in the art since this would have been a mere substitution of one well known sealing or securing means for another. Also to use a particular range of reduced pressure is seen as a matter of routine design choice wherein the generate conditions are disclosed in the prior art. (See In re Aller et al, 105 USPQ

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233).

Claims 39-41 are rejected under 35 U.S.C. § 102(b) as being anticipated by Svedman.

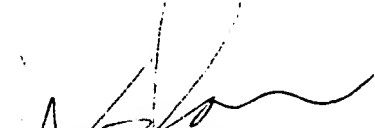
Svedman discloses a device for treating tissue that has an open cell material (11) that overlies a wound and a tube having an inlet and outlet where said inlet is connected to the open cell material.

Claims 2-5, 10, 15-38 and 42-49 are allowable over the prior art of record.

Any inquiry concerning this communication should be directed to John P. Lacyk at telephone number (703) 308-2995.



J.P. Lacyk/pw
December 20, 1993
Group Fax (703) 305-3590



WILLIAM E. KAMM
PRIMARY EXAMINER
ART UNIT 335

